

Message Text

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ACTION EB-08

INFO OCT-01 EUR-12 ISO-00 SP-02 ICA-20 AID-05 NSC-05

TRSE-00 SS-15 STR-07 OMB-01 CEA-01 CIAE-00

COME-00 FRB-01 INR-10 NSAE-00 XMB-04 OPIC-06

LAB-04 SIL-01 L-03 H-02 /108 W

-----109955 090259Z /12

R 071454Z JUN 78

FM AMEMBASSY WARSAW

TO SECSTATE WASHDC 5508

UNCLAS WARSAW 4812

E.O. 11652: N/A

TAGS: EINV EIND EFIN PL

SUBJ: UPDATE OF INVESTMENT CLIMATE STATEMENT FOR POLAND

REF: 77 STATE 244738

1. BEGIN SUMMARY. THE PEOPLE'S REPUBLIC OF POLAND ISSUED IN MAY, 1976, REGULATIONS WHICH ESTABLISHED PROCEDURES AND CONDITIONS FOR FOREIGN INVESTMENT. THE REGULATIONS PERMIT WHOLLY OWNED FOREIGN INVESTMENTS IN HOTELS, RESTAURANTS, RETAIL TRADE, AND OTHER SERVICE ENTERPRISES. THEY ALSO PROVIDE FOR JOINT EQUITY VENTURES WITH POLISH COMPANIES, INCLUDING IN THE INDUSTRIAL SECTOR.

2. NO SIZEABLE FOREIGN INVESTMENTS HAD BEEN UNDERTAKEN UNDER THESE REGULATIONS AS OF MAY 31, 1978, ALTHOUGH SEVERAL PROJECTS WERE UNDER NEGOTIATION AT THAT TIME. APPLICATIONS FOR FOREIGN INVESTMENT HAVE RECEIVED VERY CLOSE SCRUTINY, PARTICULARLY SINCE PRECEDENTS HAVE NOT BEEN ESTABLISHED AND SINCE CLARIFICATION OF EXISTING LAWS AND REGULATIONS IS APPARENTLY NEEDED. THE POLISH GOVERNMENT PERMITS, BUT DOES NOT SEEM TO BE ACTIVELY RECRUITING, FOREIGN INVESTMENT. END SUMMARY.

THE GOVERNMENT'S INTEREST IN FOREIGN INVESTMENT

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3. THE MAY 1976 REGULATIONS WERE ORIGINALLY AIMED AT, BUT NOT LIMITED TO, ATTRACTION OF INVESTMENTS FROM PERSONS OF POLISH EXTRACTION OR FROM POLISH ETHNIC ASSOCIATIONS. THE GOVERNMENT WOULD LIKE TO SEE SUCH INVESTMENTS IN HOTELS OR OTHER SERVICE ENTERPRISES. THIS POLICY IS CONSISTENT WITH THE GOVERNMENT'S EFFORTS TO INCREASE PRODUCTION AND EMPLOYMENT BY PRIVATE SECTOR ENTERPRISES IN POLAND. TO THIS END, THE GOVERNMENT HAS EASED AND

STANDARDIZED TAX ASSESSMENTS, EXTENDED SOCIAL SECURITY AND HEALTH BENEFITS, AND ENCOURAGED PRIVATE PERSONS TO PURCHASE AND OPERATE SMALL SHOPS PREVIOUSLY RUN BY THE STATE OR COOPERATIVES.

4. THE FINANCIAL CONTRIBUTION WHICH CAN BE MADE BY FOREIGN INVESTORS IS ALSO A MAJOR ATTRACTION, GIVEN POLAND'S LARGE HARD-CURRENCY DEBT. PROVISION OF LONG-TERM LOANS, UNDER ACCEPTABLE TERMS, HAS BEEN A KEY FACTOR IN SEVERAL ON-GOING NEGOTIATIONS FOR CONSTRUCTION OF LARGE HOTELS IN POLAND.

5. THE NEED FOR FOREIGN CAPITAL AND EXPERTISE WILL NOT OPEN THE FLOOD-GATES TO FOREIGN INVESTMENT, HOWEVER. THE REGULATIONS WERE ORIGINALLY FORMULATED BEFORE POLAND'S DEBT SITUATION BECAME SO ACUTE, AND POLISH PLANNERS EXPECT THAT COOPERATION VENTURES WHICH INVOLVE NO FOREIGN EQUITY WILL STILL PREDOMINATE OVER FOREIGN INVESTMENT IN THE INDUSTRIAL SECTOR.

THE LEGAL SETTING

6. DECREE 123 OF THE COUNCIL OF MINISTERS, DATED MAY 14, 1976, AND ORDERS 109 AND 110 OF THE MINISTRY OF FINANCE, DATED MAY 26, 1976, ARE THE KEY REGULATIONS GOVERNING FOREIGN INVESTMENT IN POLAND. COPIES OF THESE REGULATIONS MAY BE OBTAINED FROM THE US DEPARTMENT OF COMMERCE.

7. THE REGULATIONS PROVIDE THAT A LICENSE MUST BE ISSUED BY
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LOCAL GOVERNMENT AUTHORITIES (VOIVODSHIPS) IN CONSULTATION WITH THE MINISTRY OF FINANCE AND, USUALLY, WITH THE MINISTRY OF FOREIGN TRADE AND MARITIME ECONOMY, BEFORE ECONOMIC ACTIVITY MAY BE BEGUN BY A FOREIGN-OWNED OR MIXED-EQUITY COMPANY. THE POTENTIAL INVESTOR MUST HAVE A LEGAL PROXY, OR BE A PERMANENT RESIDENT OF POLAND, IN ORDER TO SUBMIT SUCH AN APPLICATION.

8. THE LICENSE FOR A FOREIGN INVESTMENT IS VALID FOR UP TO TEN YEARS AND IS RENEWABLE, BUT NOT FOR A PERIOD EXCEEDING THE LEASE FOR ANY FACILITIES WHICH ARE OCCUPIED. THE NUMBER OF EMPLOYEES WHICH MAY BE HIRED IS STIPULATED IN THE LICENSE. POLAND HAS NO BILATERAL AGREEMENTS WITH FOREIGN GOVERNMENTS CONCERNING TREATMENT OF FOREIGN INVESTMENT, BUT AN AGREEMENT UNDER DISCUSSION WITH THE US GOVERNMENT COULD TOUCH UPON THESE QUESTIONS.

INCONVERTIBILITY OF THE ZLOTY: A KEY CONSIDERATION

9A. ORDER 109 OF THE MINISTRY OF FINANCE REGULATES FINANCIAL ASPECTS OF FOREIGN INVESTMENTS.

9B. PRIOR TO RECEIVING A LICENSE, THE WOULD-BE FOREIGN INVESTOR MUST ESTIMATE THE TOTAL INVESTMENT COST OF THE UNDERTAKING, COMMIT HIMSELF TO MEET ALL INVESTMENTS IN CONVERTIBLE CURRENCY, AND MAKE

A CONVERTIBLE-CURRENCY DEPOSIT WITH THE BANK POLSKA KASA OPIEKI
EQUAL TO 30 PERCENT OF THE FORESEEN INVESTMENT.

10. THE CONVERSION RATE BETWEEN THE ZLOTY AND FOREIGN CURRENCIES
SHOULD BE THE "SPECIAL EXCHANGE RATE," WHICH FOR THE US DOLLAR
WAS \$1 EQUALS 33.32 ZLOTYS AS OF JANUARY 1, 1978. THIS RATE
HAS FLUCTUATED WEEKLY SINCE APRIL 1, 1978. ALSO, SOME POLISH
RETAIL FORMS (SUCH AS THE "CEPELIA" ARTS AND CRAFTS COOPERATIVE)
OPERATE WITH EXCHANGE RATES OF 45 TO 50 ZLOTYS TO THE DOLLAR.
THE APPLICABLE CONVERSION RATE SHOULD BE SPECIFIED IN THE FOREIGN
INVESTMENT LICENSE.

11. PROFIT REPATRIATION IS STRICTLY REGULATED. PROFITS MAY NOT
BE REPATRIATED DIRECTLY, EVEN IF PART OF THE FIRM'S INCOME IS IN
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CONVERTIBLE CURRENCY. UP TO 50 PERCENT OF THE NET INCOME OF
THE ENTERPRISE, BUT NOT MORE THAN THE HARD CURRENCY INVESTMENT,
MAY BE CONVERTED ANNUALLY TO CONVERTIBLE CURRENCIES. ANNUAL
REPATRIATION OF PROFIT, HOWEVER, IS LIMITED TO 9 PERCENT OF THE
HARD-CURRENCY INVESTMENT. THIS CEILING WOULD NOT APPLY IN CASES
WHERE AT LEAST 50 PERCENT OF THE FIRM'S SALES TURNOVER IS EFFECTED
THROUGH EXPORTS FOR CONVERTIBLE CURRENCY.

12. THE 9 PERCENT CEILING ON PROFIT REMITTANCES IS A KEY FACTOR
LIMITING THE ATTRACTIVENESS OF INVESTING IN POLAND. SIMILAR
RATES OF RETURN MAY BE OBTAINED ON LOW-RISK CORPORATE BONDS IN
THE UNITED STATES. ANY FOREIGN INVESTMENTS IN POLAND MAY, THERE-
FORE, BE LIMITED TO EXPORT-ORIENTED UNDERTAKINGS (HOTELS ATTRACTING
WESTERN TOURISTS WOULD SEEM TO MEET THIS CRITERIA) WHICH WOULD
NOT CONFRONT THE 9 PERCENT CEILING. IN FACT, POLISH PLANNERS HAVE
INDICATED THEY ARE WILLING TO CONSIDER JOINT EQUITY VENTURES IN
THE INDUSTRIAL SECTOR ONLY IF THEY WILL GENERATE EXPORTS TO
CONVERTIBLE CURRENCY COUNTRIES.

OTHER FACTORS.

13. FOREIGN INVESTORS SHOULD BE PREPARED TO DEAL WITH THE
HOST OF OTHER OBSTACLES WHICH CAN CONFRONT ANY PRIVATE ENTERPRISE
OPERATING IN A PLANNED ECONOMY. GUARANTEED ACCESS TO RAW MATERIALS
OR COMPONENTS, AND THE RIGHT TO IMPORT THEM IF NECESSARY, WOULD
BE IMPORTANT TO ASSURE UNINTERRUPTED OPERATION OF THE FIRM.
STATE-CONTROLLED COMPANIES OR GOVERNMENT BODIES ALSO HAVE THE
AUTHORITY TO RAISE UNILATERALLY RENTS OR OTHER CHARGES ASSESSED
FOREIGN COMPANIES AND REVIEW JOB APPLICANTS BEFORE THEY MAY BE
HIRED BY THE FOREIGN ENTERPRISE.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: INVESTMENT CLIMATE
Control Number: n/a
Copy: SINGLE
Draft Date: 07 jun 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978WARSAW04812
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780240-0792
Format: TEL
From: WARSAW
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780684/aaaacubt.tel
Line Count: 166
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 93c6cc8f-c288-dd11-92da-001cc4696bcc
Office: ACTION EB
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 77 STATE 244738
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 29 mar 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2445674
Secure: OPEN
Status: NATIVE
Subject: UPDATE OF INVESTMENT CLIMATE STATEMENT FOR POLAND
TAGS: EINV, EIND, EFIN, PL
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/93c6cc8f-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014